

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC California
(U 1001 C) for Authority Pursuant to Section 851
of the California Public Utilities Code Lease Space
to SNET Diversified Group, Inc.

Application 03-05-017
(Filed May 9, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION
OF SBC PACIFIC BELL TO WITHDRAW APPLICATION 03-05-017**

I. Background

On May 7, 2003, SBC Pacific Bell (SBC) filed an application to lease space in three of its central office buildings to its affiliate SNET Diversified Group, Inc. (SNET). In each case, SBC represented that the proposed leases would involve small amounts of excess space for which the utility had no presently contemplated need, and would be revocable at will. SBC further indicated that the application was being filed "out of an abundance of caution" because SBC believed the transactions could be entered into without prior Commission approval pursuant to Commission General Order (GO) 69-C.

Following a telephone conference on June 9, 2003 between SBC's outside counsel Caroline Mitchell and the assigned Administrative Law Judge,¹ on June 10, 2003, SBC filed its motion to withdraw the application, indicating its

¹ SBC filed a notice of ex parte communication regarding this conversation on June 12, 2003.

intention to proceed under GO 69-C. The motion to withdraw was based on SBC's understanding that if the contemplated transactions were revocable at will, they would fall within the scope of GO 69-C.

On June 12, 2003, the Office of Ratepayer Advocates (ORA) protested the application. ORA questioned whether the proposed leases to SNET would impair SBC's ability to provide service to the public; whether the revenue from the leases would be properly accounted for; and whether the leases involved cross-subsidization or other anti-competitive effects.

On June 23, 2003, SBC filed its reply to the ORA's protest. SBC's reply claimed that the proposed leases were consistent with the Commission's affiliate transaction rules and prior Commission decisions. SBC also specifically disagreed with each of the points made by ORA in the protest.

On June 24, 2003, I granted ORA a one-day extension of time to respond to the motion to withdraw. On June 26, ORA filed its response to the motion to withdraw. In the response, ORA pointed out that the application sought permission to lease the spaces to SNET and that leases were categorically outside the scope of GO 69-C.

On July 7, 2003, SBC filed a reply to ORA's response. In its reply, SBC clarified that it was prepared to restructure the transactions as licenses in order to bring them within the literal terms of GO 69-C and reiterated its contention that none of the substantive objections raised by ORA in its protest were meritorious.

II. Discussion

This application raises the issue of how best to deal with small-scale encumbrances of utility property resulting from transactions between a regulated utility and an unregulated affiliate. More specifically, it raises the question whether GO 69-C is an appropriate vehicle for carrying out affiliate transactions, no matter how small. Because the Commission has not specifically adopted a

rule dealing with the use of GO 69-C in affiliate transactions, each such proposed transaction presents both the utility and the Commission with a novel problem for decision.

Because of the conflicts inherent in affiliate transactions, the Commission must ensure that even revocable-at-will transactions this small will not have anti-competitive effects in the future, for example, when a competitive local exchange carrier seeks to co-locate equipment and is told that there is no room available to do so. Before these transactions can be approved, the Commission needs to be satisfied that such an outcome will not occur. The only way to obtain that satisfaction is to process the original Section 851 application.

Therefore, **IT IS RULED** that SBC Pacific Bell's motion to withdraw Application 03-05-017 is denied.

Dated July 30, 2003, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemesderfer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion of SBC Pacific Bell to Withdraw Application 03-05-017 on all parties of record in this proceeding or their attorneys of record.

Dated July 30, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.